THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.25649 OF 2007

DATED: 06.12.2007

Between:

N. Jangaiah

.. Petitioner

And

The APSRTC rep. by its Regional Manager, Mahaboobnagar, Mahaboobnagar District and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.25649 OF 2007

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the 3rd respondent in issuing show cause notice, dated 22.11.2007, proposing to impose penalty of removal from service on the petitioner, as arbitrary and illegal.

It appears, on 03.05.2007 at about 11.00 hours, a telephonic message was received by the Superintendent (T), Wanaparthy Depot of the respondent Corporation, that the petitioner, while conducting the bus bearing No. AP 10 Z 7090 on the route Mailaram to Kollapur, on that day, disappeared from the bus. On that, a spare conductor was sent to perform the duties. On enquiry, it came to light that the petitioner absconded to duties along with tray box, cash bag and cash. Therefore, a charge sheet was issued on 23.05.2007 enumerating the following charges:

> "1. For having absconded for your duty while performing trip from Singotam to Wanaparthy with bus No. AP 10 Z 7090 on 3.5.2007 without any reason along with tray box, tray and cash bag, with the result the traveling passengers are faced much inconvenience, which is a misconduct under Regulation 28 (xvii) and (xxxii) of APSRTC

Employees (Conduct) Regulations, 1963.

2. For having tarnished the image of the Corporation on the eyes of the traveling public for absconding your duty on 3.5.2007, which is a misconduct under Regulation 28 (xxxii) of APSRTC Employees (Conduct) Regulations, 1963."

The petitioner submitted his explanation to the charge sheet stating that, while conducting the bus, he got severe stomachache and vomited two times, and fell unconscious and somebody shifted him to his residence at Wanaparthy after treatment. Since the said explanation was not satisfactory, a detailed enquiry was conducted into the matter and the impugned show cause notice, dated 22.11.2007, was issued proposing to impose a penalty of removal from service. Aggrieved by the same, the petitioner filed this writ petition.

According to the learned counsel for the petitioner, charges framed against the petitioner are neither grave in nature nor warranting imposition of punishment of removal from service. The petitioner, while performing the duties on the fateful day, suddenly fell sick and became unconscious, and somebody shifted him to hospital and from there to his residence at Wanaparthy. In fact, on the very next day, daughter of the petitioner approached the authorities and surrendered tray box as well as cash bag with cash, informing that her father was unwell, and she also submitted a medical certificate to that effect. But, the respondents, instead of taking a lenient view on humanitarian grounds, have resorted to impose ultimate punishment of removal from service, though this is not a case of misappropriation of funds etc. and in a case, where the charges framed against the delinquent are trivial, proposing to impose a punishment of removal from service is unreasonable, irrational and unwarranted.

Per contra, learned counsel for the respondents states that the proceeding impugned in this writ petition is only a show cause notice and unless and until some substantial grounds such as lack of power or jurisdiction, or malafides on the part of the respondents in issuing the said notice are made out, the question of maintaining the writ petition does not arise.

Generally speaking, no writ petition is maintainable against a show cause notice, unless and until some substantial grounds such as lack of jurisdiction or power, or malafides on the part of the respondents in issuing the same, have been made out, as rightly contended by the learned counsel for the respondents. May be the charges are trivial and proposing to impose a punishment of removal from service for the said charges is unreasonable and irrational. But, show cause notice is not a final order and the petitioner can submit his explanation to the same, and the authorities may consider such explanation and may also consider for imposition of a lesser punishment. Instead of submitting his explanation to the show cause notice issued and inviting a final order, the petitioner approached this Court. Thus, the writ petition is devoid of merits and is liable to be dismissed at admission stage itself. The writ petition is, accordingly, dismissed. No order as to costs.

However, the respondents shall take the overall circumstances into consideration, while passing final orders.

JUSTICE C.V. RAMULU

6th December, 2007.

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